

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

ELMER RED EAGLE, JR.,

Defendant/Movant.

Cause No. CR 01-93-GF-BMM
CV 16-86-GF-BMM

ORDER DISMISSING MOTION AND
DENYING CERTIFICATE OF
APPEALABILITY

This case comes before the Court on Defendant Red Eagle's motion for a certificate of appealability. Red Eagle is a federal prisoner proceeding pro se.

Red Eagle's conviction in this case was vacated because the evidence was not sufficient to support his conviction. *See United States v. Red Eagle*, No. 02-30187 (9th Cir. Mar. 13, 2003). Consequently, there is nothing to vacate, set aside, or correct. Red Eagle's motion for a certificate of appealability must be dismissed.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Red Eagle's motion for certificate of appealability (Doc. 79) is DISMISSED for lack of jurisdiction.
2. A certificate of appealability is DENIED. The clerk shall immediately process the appeal if Red Eagle files a notice of appeal.
3. The clerk shall ensure that all pending motions in this case and in CV 16-

86-GF-BMM are terminated and shall close the civil file by entering a judgment of dismissal.

4. The clerk shall alter the docket of the case to reflect that the sentence and judgment were vacated and Red Eagle was acquitted.

DATED this 27th day of July, 2016.

A handwritten signature in blue ink, reading "Brian Morris". The signature is written in a cursive style with a horizontal line underneath it.

Brian Morris
United States District Court Judge